

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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STALIN RODRIGO REYES ESPINOZA

Index No.: 514760/2022

Plaintiff,

**VERIFIED ANSWER
WITH CROSS-CLAIMS**

-a760/2gainst-

ASK ELECTRICAL CONTRACTING CORP.,
Defendants.
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Defendant ASK ELECTRICAL CONTRACTING CORP., by its attorneys, the LAW OFFICES OF KEVIN P. WESTERMAN, as and for their Verified Answer to the Plaintiff's Verified Complaint, respectfully alleges upon information and belief as follows:

1. Denies knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained within the paragraph numbered, "1" of plaintiff's Verified Complaint.

2. Denies each and every allegation contained within the paragraph numbered "2" of plaintiff's Verified Complaint and refers all questions of law to the Trial Court for its determination.

3. Admits each and every contained within the paragraph numbered as "3" of plaintiff's Verified Complaint.

4. Denies each and every allegation contained within the paragraph numbered "4" of plaintiff's Verified Complaint.

5. Denies knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained within the paragraph numbered, "5" of plaintiff's Verified Complaint.

ANSWERING FOR THE FIRST CAUSE OF ACTION

6. In response to paragraph “6”, the defendant repeats and reiterates each and every response to the allegations contained in paragraphs "1" through "5" of the Verified Complaint with the same force and effect as if set forth herein at length.

7. Denies each and every allegation contained within the paragraph numbered “7” of plaintiff’s Verified Complaint.

8. Denies each and every allegation contained within the paragraph numbered “8” of plaintiff’s Verified Complaint.

9. Denies each and every allegation contained within the paragraph numbered “9” of the Complaint on the grounds that the allegation is vague as to the term “operated” and does not allow this answering defendant to plead otherwise.

10. Denies each and every allegation contained within the paragraph numbered “10” of the Complaint on the grounds that the allegation is vague as to the term “maintained” and does not allow this answering defendant to plead otherwise.

11. Denies each and every allegation contained within the paragraph numbered “11” of the Complaint on the grounds that the allegation is vague as to the terms “controlled and managed” and does not allow this answering defendant to plead otherwise.

12. Denies each and every allegation contained within the paragraph numbered “12” of plaintiff’s Verified Complaint.

13. Denies each and every allegation contained within the paragraph numbered “13” of plaintiff’s Verified Complaint.

14. Denies each and every allegation contained within the paragraph numbered “14” of plaintiff’s Verified Complaint.

15. Denies each and every allegation contained within the paragraph numbered “15” of the Complaint on the grounds that the allegation is vague and does not allow this answering defendant to plead otherwise.

16. Denies each and every allegation contained within the paragraph numbered “16” of plaintiff’s Verified Complaint.

17. Denies knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained within the paragraph numbered, “17” of plaintiff’s Verified Complaint.

18. Denies knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained within the paragraph numbered, “18” of plaintiff’s Verified Complaint.

19. Neither admit nor deny allegation contained within the paragraph numbered “19” but refers all questions of law to the Trial Court for its determination.

20. Denies each and every allegation contained within the paragraph numbered “20” of plaintiff’s Verified Complaint.

21. Denies each and every allegation contained within the paragraph numbered “21” of plaintiff’s Verified Complaint.

22. Denies each and every allegation contained within the paragraph numbered “22” of plaintiff’s Verified Complaint.

23. Denies each and every allegation contained within the paragraph numbered “23” of plaintiff’s Verified Complaint and refers all questions of law to the Trial Court for its determination.

24. Denies each and every allegation contained within the paragraph numbered “24” of plaintiff’s Verified Complaint and refers all questions of law to the Trial Court for its determination.

25. Denies each and every allegation contained within the paragraph numbered “25” of the Verified Complaint

26. Denies each and every allegation contained within the paragraph numbered “26” of plaintiff’s Verified Complaint.

27. Denies each and every allegation contained within the paragraph numbered “27” of plaintiff’s Verified Complaint.

28. Denies each and every allegation contained within the paragraph numbered “28” of plaintiff’s Verified Complaint.

29. Denies each and every allegation contained within the paragraph numbered “29” of plaintiff’s Verified Complaint..

ANSWERING FOR THE SECOND CAUSE OF ACTION

30. In response to paragraph “30”, the defendant repeats and reiterates each and every response to the allegations contained in paragraphs "1" through "29" of the Verified Complaint with the same force and effect as if set forth herein at length.

31. Denies each and every allegation of the plaintiff’s Verified Complaint contained within the paragraph numbered as “31” and refers all questions of law to the Trial Court for its determination.

32. Denies each and every allegation of the plaintiff’s Verified Complaint contained within the paragraph numbered as “32” and refers all questions of law to the Trial Court for its determination.

33. Denies each and every allegation contained within the paragraph numbered “33” of plaintiff’s Verified Complaint.

34. Denies each and every allegation contained within the paragraph numbered “34” of plaintiff’s Verified Complaint and refers all questions of law to the Trial Court for its determination.

35. Denies each and every allegation contained within the paragraph numbered “35” of plaintiff’s Verified Complaint and refers all questions of law to the Trial Court for its determination.

36. Denies each and every allegation contained within the paragraph numbered “36” of plaintiff’s Verified Complaint and refers all questions of law to the Trial Court for its determination.

37. Denies each and every allegation contained within the paragraph numbered “37” of plaintiff’s Verified Complaint and refers all questions of law to the Trial Court for its determination.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action against the Defendant ASK ELECTRICAL CONTRACTING CORP.,

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

If plaintiff has sustained any injuries or damages as a result of the matters alleged in the Verified Complaint, all of which are denied by ASK ELECTRICAL CONTRACTING CORP., then such injuries and damages resulted in whole or in part from plaintiff’s and/or underlying plaintiff’s own culpable conduct including comparative negligence and assumption of risk. ASK ELECTRICAL CONTRACTING CORP., invokes the offset and other statutory protections of the

New York Civil Practice Law and Rules ("CPLR") Articles 14 and 14-A and Article 15 of the General Obligations Law, and thus if any damages are recoverable in this action, such recovery must be reduced in proportion to which plaintiff's own culpable conduct and negligence caused or contributed to the damages alleged herein.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Any damages sustained by plaintiff was caused, in whole or in part, by the negligence or other culpable conduct of parties and/or non-parties to this action over which Defendant ASK ELECTRICAL CONTRACTING CORP., had no control or right to exercise such control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

That the comparative negligence of the plaintiff bars it from relief against ASK ELECTRICAL CONTRACTING CORP., The alleged incident occurred as a result of the plaintiff's own provocation, improper and culpable conduct and the plaintiff is hereby comparatively negligent as a result therefore, in whole or in part.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Verified Complaint should be dismissed because the injuries alleged by plaintiff was caused by intervening or superseding causes and any acts or omissions of Defendant ASK ELECTRICAL CONTRACTING CORP., was not the proximate cause of the injuries alleged therein.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

That pursuant to CPLR Article 16, if it is determined by verdict or decision that two or more tortfeasors are jointly liable to plaintiff, and if the liability of Defendant ASK ELECTRICAL

CONTRACTING CORP., is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such Defendant ASK ELECTRICAL CONTRACTING CORP., to the plaintiff for non-economic loss shall not exceed this Defendant ASK ELECTRICAL CONTRACTING CORP., equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Pursuant to CPLR §4545, if the Court finds that any costs of medical care which the plaintiff may have incurred were replaced or indemnified in whole or in part by any collateral source, the Court shall reduce the amount of any award to the plaintiff by the amount of said reimbursement, minus the premiums, if any, paid by the plaintiff or anyone on their behalf for such benefits for the applicable period immediately preceding the accrual of this lawsuit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

All risks and danger of loss or damages connected with the occurrences alleged in the Plaintiff's Verified Complaint were at the time and place mentioned open, obvious and apparent and were known by the underlying plaintiff and voluntarily assumed by the underlying plaintiff.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

If, at the time of trial, any of the issues herein have finally been determined wholly or partially against the plaintiff by a tribunal, forum or court, all of competent jurisdiction, then in that event, the plaintiff will be estopped from relitigating such issue or issues.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Defendant ASK ELECTRICAL CONTRACTING CORP., states that plaintiff could have avoided the injuries and damages alleged in the Verified Complaint and was the sole proximate cause of his accident.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

Defendant ASK ELECTRICAL CONTRACTING CORP., states that underlying plaintiff failed to take any or sufficient action, or such action as was necessary, to mitigate or minimize the injuries and damages alleged or the conditions that allegedly gave rise to the injuries or damages alleged in the Verified Complaint.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Defendant ASK ELECTRICAL CONTRACTING CORP., did not breach any contractual or common law duties to the plaintiff and/or to any parties or non-parties to this action.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff fails to name the necessary party or parties which allegedly caused the alleged injuries sustained by the plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

Any contract provisions relied upon by any party as against this Defendant is void and unenforceable under New York law.

AS AND FOR AN FIFTEENTH AFFIRMATIVE DEFENSE

ASK ELECTRICAL CONTRACTING CORP., complied with all of its obligations under any enforceable contract.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

ASK ELECTRICAL CONTRACTING CORP., is not a proper Labor Law defendant and plaintiff's claims under the Labor Law do not apply to ASK ELECTRICAL CONTRACTING CORP.,

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff cannot sustain a cause of action against this defendant based on the Workers' Compensation Law and Doctrine of Special Employee.

AS AND FOR THE EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's accident must be dismissed as plaintiff has already commenced another action in these courts for the relief requested.

AS AND FOR THE NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to join an indispensable party.

AS AND FOR THE TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the Statue of Limitations.

AS AND FOR THE TWENTY-FIRST AFFIRMATIVE DEFENSE

This Answering Defendant was not working on the project at the time of plaintiff's accident.

WHEREFORE, the defendant, ASK ELECTRICAL CONTRACTING CORP., demands judgment dismissing the plaintiff's Complaint, and further demands judgment against the codefendant on the cross-claim, together with the costs, expenses, disbursements, and attorneys' fees incurred in the defense of this action and in the conduct of the cross-claims.

AMENDMENTS

ASK ELECTRICAL CONTRACTING CORP., specifically reserves the right to amend its Verified Answer by adding defenses, counterclaims, cross-claims, or by instituting third-party actions as additional facts are obtained through further investigation and discovery. To the extent any other potential defendants raises any defense or issue, which would exonerate ASK ELECTRICAL CONTRACTING CORP., or bar recovery against ASK ELECTRICAL CONTRACTING CORP., incorporates those answers or defenses herein by reference.

WHEREFORE, Defendant ASK ELECTRICAL CONTRACTING CORP., prays for judgment as follows:

- (a) That plaintiff takes nothing by way of his Verified Complaint and that each cause of action against the Defendant ASK ELECTRICAL CONTRACTING CORP., is dismissed;
- (b) That the Court grants judgment in favor of Defendant ASK ELECTRICAL CONTRACTING CORP., and;
- (c) For such other and further relief as the Court deems just and proper.

Dated: Garden City, New York
September 9, 2022

Yours, etc.,



By _____
GEORIGIA S. ALIKAKOS, ESQ.
LAW OFFICE OF KEVIN P. WESTERMAN
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TO: GORAYEB & ASSOCIATES, P.C.
Attorney for Plaintiff
100 Willaim Street, Suite 1900
New York, New York, 1900
New York, New York, 10038

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
STALIN RODRIGO REYES ESPINOZA
Plaintiff,

**NOTICE TO TAKE
DEPOSITION
UPON ORAL
EXAMINATION**

-against-

ASK ELECTRICAL CONTRACTING CORP.,
Defendants.
-----X

S I R S:

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules, the undersigned will take the oral deposition testimony of the plaintiff STALIN RODRIGO REYES ESPINOZA, as adverse parties, before a notary public at the Law Offices of KEVIN P. WESTERMAN 990 Stewart Avenue Garden City, New York, on the **9th day of November, 2022, at 10:00 a.m.**, upon all of the relevant facts and circumstances surrounding the accident which is the subject of this action, including negligence, contributory negligence and damages; and for the purposes authorized by Rule 3111 of the Civil Practice Law and Rules those parties are required to produce at such examinations the following: All books, papers and records relating to said action in the possession, custody or control of said plaintiff.

Dated: September 9, 2022

Yours, etc.,



By _____
GEORGINA S. ALIKAKOS, ESQ.
LAW OFFICE OF KEVIN P. WESTERMAN
Attorneys for Defendant-
ASK ELECTRICAL CONTRACTING CORP.,

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